

IN THE WEST VIRGINIA SENATE  
SECOND EXTRAORDINARY SESSION  
2018

*IN RE: The Matter of Impeachment Proceedings  
Against Respondent Justice Margaret Workman*

**BOARD OF MANAGERS OF THE WEST VIRGINIA HOUSE OF DELEGATES  
RESPONSE TO RESPONDENT CHIEF JUSTICE MARGARET WORKMAN'S  
MOTION FOR MORE DEFINITE STATEMENT, WVRCP 12(E)**

Come Now, the Board of Managers of the West Virginia House of Delegates (hereinafter "Board of Managers") and request the Court to reject Respondent Chief Justice Workman's (hereinafter "CJ Workman" or "Respondent") Motion For More Definite Statement, WVRCP 12(e).

I. Preliminary Considerations

Respondent challenges the adequate notice provided by Article XIV, Article of Impeachment, (hereinafter "Article XIV"), by filing a Motion For More Definite Statement, WVRCP 12(e).

Respondent seeks clarification of: (i) specific allegations on which it will rely in a proceeding against the Respondent; (ii) the timeframe during which Respondent allegedly committed an act or omission justifying removal from office; and (iii) whether the Board of Managers will pursue any theory of joint or vicarious culpability to prove its case.

However, application of WVRCP 12(e) is inappropriate for two reasons: (1) the Senate has elected not to try the articles of impeachment under established rules of civil procedure, providing for its own rules related to impeachment procedure; and, (2) the parties have already engaged in discovery in accordance with the promulgated rules of

the Senate, a process which renders issues of adequate notice of allegations against the Respondent moot.

## II. The West Virginia Rules of Civil Procedure Do Not Apply.

We reiterate as we have noted in prior pleadings, that an impeachment proceeding for a Justice of the Supreme Court of Appeals is not a civil action, but wholly a political one, and if convicted by the West Virginia Senate, the Respondent will not be subject to a civil judgement, but will simply be removed from the privilege of serving the people of West Virginia as a Justice. <sup>1</sup>

More specifically, Senate rules which apply to the impeachment proceeding neither incorporate nor refer to the West Virginia Rules of Civil Procedure. See, Senate Resolution 203, *Rules of the West Virginia Senate While Sitting as a Court of Impeachment During the Eighty-Third Legislature*, August 20, 2018 (hereinafter, "Senate Rules").

## III. West Virginia Does Not Favor Motions for More Definite Statement.

In view of the policy to construe pleadings liberally, courts generally disfavor granting a motion for more definite statement. The consensus among courts is to allow discovery to fill in any gaps found in the pleadings. See, Palmer and Davis, *Litigation Handbook on West Virginia Rules of Civil Procedure*, 5<sup>th</sup> Ed., § 12(e), p. 431 (2017).

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<sup>1</sup> In the proceedings related to Justice Walker, the Board of Managers addressed issues related to application of judicial rules of procedure in the context of the Senate Rules. Included in those issues are discussions of the standard of review, Rule 23 (a) of the *Rules of the West Virginia Senate While Sitting as a Court of Impeachment During the Eighty- Third Legislature*, and discussion of *Nixon v. United States*, 506 U.S. 224, (1993). See, *Board Of Managers Of The West Virginia House Of Delegates' Response To Justice Walker's Motion In Limine To Preclude Evidence Of Unimpeached Conduct*, and *Board Of Managers Of The West Virginia House Of Delegates' Response To Justice Walker's Motion to Dismiss*.

The Senate Rules provide for extensive discovery procedures, affording Respondent adequate opportunity and access to fill in any perceived gaps in Article XIV. Formal methods and materials for a discovery process are established and adopted by Senate Rules, specifically Senate Rule 21. Through that process, Respondent is provided a full opportunity to identify evidence relevant to the proof and substance of Article XIV.

#### IV. Formal Discovery Has Already Been Employed

Pursuant to Senate Rule 21(a)(1-4), on September 7, 2018, the Board of Managers provided respondent with all exhibits, a sworn statement of Respondent, and a list of witnesses. To date there are no objections to the Board of Managers' mandated disclosures.

If Respondent makes any written request for discovery, the Board of Managers is required to respond within ten (10) days, with Respondent concomitantly required to disclose the same information to the Board of Managers.

Pursuant to Senate Rule 21, The Board of Managers has already disclosed to Respondent: (1) any written or recorded statement of the Respondent which the Board intends to use in their case-in-chief; (2) any books, papers, documents, data, photographs, tangible objects, buildings or places, or copies of such items which the Board of Managers intend to use in their case-in-chief; (3) a list of all persons the Board of Managers intends to call as witnesses in their case-in-chief; and, (4) a written summary of any expert testimony the Board of Managers intends to use.

Respondent has not submitted requests for additional or supplemental discovery.

V. Conclusion.

(a) Respondent's motion for more definite statement stems from procedural aspects for civil courts of law which were specifically rejected by the Senate when it passed Resolution 203;

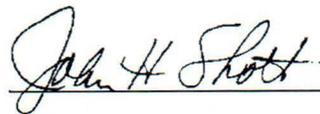
(b) In traditional West Virginia civil practice, motions for more definite statement are disfavored, deferring to the discovery process to fill in any gaps;

(c) There is an extensive contextual and procedural discovery process promulgated by Senate Rule 21; and,

(d) The Senate Rule 21 discovery process has already been employed by Respondent and the Board of Managers in this matter to fill in any gaps in Article XIV.

In the face of appropriate discovery Respondent is neither left in the dark nor unfairly positioned for evidentiary proof regarding the allegations of Article XIV.

Accordingly, the Board of Managers requests Respondent's Motion for a More Definite Statement be denied



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**CERTIFICATE OF SERVICE**

I, JOHN H. SHOTT, on behalf of the Board of Managers, do hereby certify that the foregoing "*Board of Managers of the West Virginia House of Delegates' Response to Chief Justice Workman's Motion for More Definite Statement, WVRCP 12(E)*" has been served upon the following individuals this 5<sup>th</sup> day of October 2018, by delivering a true and exact copy thereof as follows:

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